

State of Wisconsin



January 2011 Special Session
Assembly Bill 3

Date of enactment: **January 31, 2011**
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2011 WISCONSIN ACT 3

AN ACT to amend 71.26 (2) (a) 4. and 71.45 (2) (a) 10.; and **to create** 71.05 (6) (b) 47., 71.26 (2) (a) 10., 71.28 (9s), 71.30 (3) (ex), 71.47 (9s) and 71.49 (1) (ex) of the statutes; **relating to:** income and franchise tax deductions and credits for businesses that relocate to this state and granting rule-making authority.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 71.05 (6) (b) 47. of the statutes is created to read:

71.05 (6) (b) 47. a. In this subdivision, "locates to this state" means moving either 51 percent or more of the workforce payroll of the business or at least \$200,000 of wages, as defined in section 3121 of the Internal Revenue Code, paid to such workforce to Wisconsin during the first taxable year to which a modification under this subdivision relates.

am. For taxable years beginning after December 31, 2010, for 2 consecutive taxable years beginning with the taxable year in which the claimant's business locates to this state from another state or another country and begins doing business in this state, as defined in s. 71.22 (1r), and subject to the limitations provided under subd. 47. d. and e., the profit or loss from a trade or business as reported on federal income tax return schedules C and F or their equivalents, plus ordinary gain or loss on the sale of business assets, as determined under s. 71.01 (6), but not less than zero, multiplied by the apportionment fraction determined in s. 71.04 (4) and subject to s. 71.04 (7).

b. With respect to partners and members of limited liability companies, for taxable years beginning after December 31, 2010, for 2 consecutive taxable years

beginning with the taxable year in which the partnership's or limited liability company's business locates to this state from another state or another country and begins doing business in this state, as defined in s. 71.22 (1r), and subject to the limitations provided under subd. 47. d. and e., the partner's or member's distributive share of taxable income as calculated under section 703 of the Internal Revenue Code; plus the items of income and gain under section 702 of the Internal Revenue Code, including taxable state and municipal bond interest and excluding nontaxable interest income or dividend income from federal government obligations; minus the items of loss and deduction under section 702 of the Internal Revenue Code, except items that are not deductible under s. 71.21; plus guaranteed payments to partners under section 707 (c) of the Internal Revenue Code; plus the credits claimed under s. 71.07 (2dd), (2de), (2di), (2dj), (2dL), (2dm), (2dr), (2ds), (2dx), (2dy), (3g), (3h), (3n), (3p), (3q), (3r), (3rm), (3rn), (3s), (3t), (3w), (5e), (5f), (5g), (5h), (5i), (5j), (5k), (5r), (5rm), and (8r); and plus or minus, as appropriate, transitional adjustments, depreciation differences, and basis differences under s. 71.05 (13), (15), (16), (17), and (19), multiplied by the apportionment fraction determined in s. 71.04 (4) and subject to s. 71.04 (7) or by separate accounting. No amounts subtracted under this subd. 47. b. may be included in the modification under par. (b) 9. or 9m.

* Section 991.11, WISCONSIN STATUTES 2009-10: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

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c. With respect to shareholders of a tax–option corporation, for taxable years beginning after December 31, 2010, for 2 consecutive taxable years beginning with the taxable year in which the tax–option corporation’s business locates to this state from another state or another country and begins doing business in this state, as defined in s. 71.22 (1r), and subject to the limitations provided under subd. 47. d. and e., the shareholder’s distributive share of the entity’s net income or loss as determined under this chapter, including interest income from federal, state, and municipal government obligations, multiplied by the apportionment fraction determined in s. 71.25 (6m) and subject to s. 71.25 (9) or by separate accounting. No amounts subtracted under this subdivision may be included in the modification under par. (b) 9. or 9m.

d. No modification may be made under this subdivision if the person, partnership, limited liability company, or tax–option corporation has done business in this state during any of the 2 taxable years preceding the first taxable year in which the modification would otherwise be allowed.

e. The department shall promulgate rules to administer this subdivision.

SECTION 2. 71.26 (2) (a) 4. of the statutes is amended to read:

71.26 (2) (a) 4. Plus the amount of the credit computed under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1dm), (1ds), (1dx), (1dy), (3g), (3h), (3n), (3p), (3q), (3r), (3rm), (3rn), (3t), (3w), (5e), (5f), (5g), (5h), (5i), (5j), (5k), (5r), (5rm), ~~and (8r)~~, and (9s) and not passed through by a partnership, limited liability company, or tax–option corporation that has added that amount to the partnership’s, limited liability company’s, or tax–option corporation’s income under s. 71.21 (4) or 71.34 (1k) (g).

SECTION 3. 71.26 (2) (a) 10. of the statutes is created to read:

71.26 (2) (a) 10. Minus the amount computed under 71.05 (6) (b) 47. b.

SECTION 4. 71.28 (9s) of the statutes is created to read:

71.28 (9s) RELOCATED BUSINESS CREDIT. (a) *Definition.* In this subsection:

1. “Claimant” means a person who files a claim under this subsection.

2. “Locates to this state” means moving either 51 percent or more of the workforce payroll of the business or at least \$200,000 of wages, as defined in section 3121 of the Internal Revenue Code, paid to such workforce to Wisconsin during the first taxable year to which a credit under this subsection relates.

(b) *Filing claims.* Subject to the limitations provided under this subsection, for taxable years beginning after December 31, 2010, for 2 consecutive taxable years beginning with the taxable year in which the claimant’s business locates to this state from another state or another

country and begins doing business in this state, a claimant may claim as a credit against the taxes imposed under s. 71.23, up to the amount of the taxes, the amount of the claimant’s tax liability under this subchapter after applying all other allowable credits, deductions, and exclusions.

(c) *Limitations.* 1. No person may claim a credit under this subsection if the person has done business in this state during any of the 2 taxable years preceding the first taxable year in which the person would otherwise be eligible to claim a credit under par. (b).

2. Partnerships, limited liability companies, and tax–option corporations may not claim the credit under this subsection.

(d) *Administration.* 1. Subsection (4) (g) and (h), as it applies to the credit under sub. (4), applies to the credit under this subsection.

2. The department shall promulgate rules to administer this subsection.

SECTION 5. 71.30 (3) (ex) of the statutes is created to read:

71.30 (3) (ex) Relocated business credit under s. 71.28 (9s).

SECTION 6. 71.45 (2) (a) 10. of the statutes is amended to read:

71.45 (2) (a) 10. By adding to federal taxable income the amount of credit computed under s. 71.47 (1dd) to (1dy), (3g), (3h), (3n), (3p), (3q), (3r), (3rm), (3rn), (3w), (5e), (5f), (5g), (5h), (5i), (5j), (5k), (5r), (5rm), ~~and (8r)~~, and (9s) and not passed through by a partnership, limited liability company, or tax–option corporation that has added that amount to the partnership’s, limited liability company’s, or tax–option corporation’s income under s. 71.21 (4) or 71.34 (1k) (g) and the amount of credit computed under s. 71.47 (1), (3), (3t), (4), (4m), and (5).

SECTION 7. 71.47 (9s) of the statutes is created to read:

71.47 (9s) RELOCATED BUSINESS CREDIT. (a) *Definition.* In this subsection:

1. “Claimant” means a person who files a claim under this subsection.

2. “Locates to this state” means moving either 51 percent or more of the workforce payroll of the business or at least \$200,000 of wages, as defined in section 3121 of the Internal Revenue Code, paid to such workforce to Wisconsin during the first year to which a credit under this subsection relates.

(b) *Filing claims.* Subject to the limitations provided under this subsection, for taxable years beginning after December 31, 2010, for 2 consecutive taxable years beginning with the taxable year in which the claimant’s business locates to this state from another state or another country and begins doing business in this state, a claimant may claim as a credit against the taxes imposed under s. 71.43, up to the amount of the taxes, the amount of the claimant’s tax liability under this subchapter after apply-

ing all other allowable credits, deductions, and exclusions.

(c) *Limitations.* 1. No person may claim a credit under this subsection if the person has done business in this state during any of the 2 taxable years preceding the first taxable year in which the person would otherwise be eligible to claim a credit under par. (b).

2. Partnerships, limited liability companies, and tax-option corporations may not claim the credit under this subsection.

(d) *Administration.* 1. Section 71.28 (4) (g) and (h), as it applies to the credit under s. 71.28 (4), applies to the credit under this subsection.

2. The department shall promulgate rules to administer this subsection.

SECTION 8. 71.49 (1) (ex) of the statutes is created to read:

71.49 (1) (ex) Relocated business credit under s. 71.47 (9s).

SECTION 9. Nonstatutory provisions.

(1) **REQUIRED GENERAL FUND BALANCE.** Section 20.003 (4) of the statutes does not apply to the action of the legislature in enacting this act.
